

**EMPLOYMENT APPEALS BOARD DECISION**  
**2020-EAB-0147**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On December 20, 2019, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily quit working for the employer without good cause and was disqualified from receiving benefits beginning November 17, 2019 (decision # 103859). Claimant filed a timely request for hearing. On January 22, 2020, ALJ Shoemake conducted a hearing, and on January 29, 2020 issued Order No. 20-UI-143504, affirming the Department's decision. On February 18, 2020, claimant filed an application for review with the Employment Appeals Board (EAB).

EAB did not consider claimant's written argument when reaching this decision because she did not include a statement declaring that she provided a copy of her argument to the opposing party or parties as required by OAR 471-041-0080(2)(a) (May 13, 2019).

**FINDINGS OF FACT:** (1) Prestige Care, Inc., employed claimant as a dietary aide from September 25, 2019 to November 26, 2019. Claimant's job duties included food preparation, cleaning, and serving residents food. Claimant's cleaning responsibilities included lifting heavy racks of dishes, which caused her back pain. At all relevant times, claimant viewed her immediate supervisor, the dietary manager, as verbally abusive toward her.

(2) After three weeks of employment, claimant was required to provide fingerprints as part of her employment background investigation. Claimant had recently failed to pass a similar background investigation with her prior employer. At the time she provided her fingerprints, claimant knew she was unlikely to pass her background investigation, and that the employer would likely terminate her employment.

(3) Claimant initially worked 30 hours per week; however, recurring issues with back pain caused her to leave work on occasion, reducing her hours. Although claimant always arranged coverage for the hours she missed due to her back pain, the employer became concerned about the missed work.

(4) On October 23, 2019, claimant was experiencing back pain, which she brought to the attention of the dietary manager. Claimant and the dietary manager also had an argument. Claimant left work for the day believing that she had arranged coverage for the time she would be missing. The employer viewed claimant's departure for the day as "walking out" on the job without excuse. Transcript at 32-33.

(5) On October 24, 2019, claimant and the employer's executive director had a meeting to discuss her walking out on the job the day before. Claimant told the executive director what had happened between claimant and the dietary manager, and the executive director told claimant, "next time take a break, don't walk off your job, and then come to me ... so that I can take care of it." Transcript at 33. The executive director told claimant she would speak to the dietary manager and warned claimant that walking off the job was a violation of company policy that would result in her termination if it occurred again.

(6) The October 24, 2019, conversation also included discussion about claimant's recurring missed work due to back pain. The executive director told claimant that if "that keeps happening, we're gonna have to give a day to someone else...." Transcript at 10. Claimant viewed the employer's position as understandable, and she made modifications to her work style, including wearing a back brace during her shifts. Claimant did not miss any part of another shift until her separation date.

(7) On or about November 26, 2019, claimant reported for her morning shift, but immediately left work after reading the schedule and seeing that her employer had reduced her hours. At the time she left, it was claimant's intent to set up a meeting with the executive director to discuss the change in her work hours as well as continued abuse she felt she was receiving from the dietary manager. Claimant received a call from the dietary manager asking where she was, and claimant told the dietary manager that she left because she was upset about the reduction in hours and "I have to do something serious here to – to get some attention... and I will see you tomorrow." Transcript at 8. The executive director called claimant later that morning and told her, "I gave you a chance...[y]ou walked out again, ... that is self-termination by our employee handbook, and [I am] terminating [you] at this time." Transcript at 32. If, at that point, claimant had asked to remain on the job, the employer would not have allowed her to do so.

(8) The employer learned the next day that claimant did not pass her background check.

**CONCLUSIONS AND REASONS:** The employer discharged claimant for misconduct.

Where an employee could have continued to work for the same employer for an additional period of time, the work separation is a voluntary leaving. OAR 471-030-0038(2)(a) (December 23, 2018). If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer, the separation is a discharge. OAR 471-030-0038(2)(b).

The record demonstrates that when claimant left work on November 26, 2019, she did so intent on setting up a future meeting with the executive director, and that she told the dietary manager that she would "see him tomorrow." Claimant also continued to appear for work at all relevant times, despite her knowledge that she would not pass her background check and her knowledge that the employer would ultimately terminate her from employment. The preponderance of the evidence demonstrates that claimant would have continued working for the employer after November 26, 2019, but the employer

prevented her from doing so by making the decision to terminate her employment on that day based on claimant's decision to walk off the job during her shift.

ORS 657.176(2)(a) requires a disqualification from unemployment insurance benefits if the employer discharged claimant for misconduct connected with work. "As used in ORS 657.176(2)(a) . . . a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest is misconduct." OAR 471-030-0038(3)(a). "[W]antonly negligent' means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee." OAR 471-030-0038(1)(c).

Isolated instances of poor judgment and good faith errors do not constitute misconduct. OAR 471-030-0038(3)(b). However, isolated "[a]cts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment" and will not exculpate a claimant from a finding of misconduct. OAR 471-030-0038(1)(d)(D).

The record reflects that the employer had a policy preventing employees from walking off the job during a shift. The employer's policy was reasonable, as was the employer's expectation that all of its employees would abide by the policy. After an incident where the employer believed that claimant walked off the job mid-shift, the record demonstrates that on October 24, 2019, the employer placed claimant on notice of this policy and explained to her that if she walked off the job again, without permission, it would result in claimant's immediate termination. On November 26, 2019, claimant reported to work and then immediately left work, because she was upset that the employer had reduced her work hours. Claimant's November 26, 2019, decision to walk off the job during her shift, after the employer had previously warned claimant of the consequences of doing so, constituted a willful violation of the reasonable standards of behavior that the employer had a right to expect and a disregard of the employer's business interests.

Claimant's decision on November 26, 2019 to walk off the job during her shift was not the result of a good faith error. The employer had placed claimant on notice of the consequences of walking off the job during her shift, and claimant left her shift anyway in order to "do something serious" and "get some attention." Given claimant's prior notice of the employer's expectations regarding walking off the job, claimant did not have a reasonable belief that it was okay to walk off the job on November 26, 2019, nor did she sincerely or reasonably believe that the employer would excuse her conduct in doing so. Claimant's actions reflected a disregard for the employer's interests and there no reasonable view, based on the totality of claimant's actions, that claimant was acting in good faith.

Claimant's willful decision on November 26, 2019, to walk off the job during her shift was not an isolated instance of poor judgment. While claimant's actions were arguably isolated, and while there is no evidence suggesting that claimant's actions violated any law or were tantamount to unlawful conduct, the preponderance of the evidence demonstrates that by walking off the job during her shift claimant violated a reasonable employment policy and created an irreparable breach of trust in the employment relationship and made a continued employment relationship impossible. Although claimant felt wronged

by the reduction in her hours, claimant could have chosen to remain at the jobsite and discuss the matter with the executive director upon the executive director's arrival at work. Instead, claimant left the worksite abruptly without any regard for the fact that she was scheduled to work that day and without regard for the employer's business interests. Under the circumstances presented, no similarly situated reasonable employer would have continued an employment relationship with claimant given the magnitude of the breach of trust that had occurred.

The employer discharged claimant for misconduct. Claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:** Order No. 20-UI-143504 is affirmed.

J.S. Cromwell and S. Alba;  
D.P. Hettle, not participating.

**DATE of Service:** March 26, 2020

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນຫ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الاستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
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